LIBRARY

Office-Supreme Court, U.S.
FILED
APR 8 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 979

DYKE WATER COMPANY, a California corporation, and WILLIAM M. LANSDALE, president, and ARLYNE LANSDALE, secretary-treasurer, officers, directors and stockholders of said DYKE WATER COMPANY, and DYKE LANSDALE,

Petitioners,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, and FREDERICK B. HOLOBOFF, GEORGE G. GROVER, EVERETT C. McKEAGE, PETER E. MITCHELL and WILLIAM M. BENNET, members of and constituting said Public Utilities Commission of the State of California,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

Brief in Opposition

RICHARD E. TUTTLE
Chief Counsel

J. THOMASON PHELPS
Principal Counsel

CATHERINE D. McANDREW
Counsel

5072 State Building
San Francisco, California 94102

Attorneys for Respondents

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 979

DYKE WATER COMPANY, a California corporation, and WILLIAM M. LANSDALE, president, and ARLYNE LANSDALE, secretary-treasurer, officers, directors and stockholders of said DYKE WATER COMPANY, and DYKE LANSDALE,

Petitioners,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, and FREDERICK B. HOLOBOFF, GEORGE G. GROVER, EVERETT C. McKEAGE, PETER E. MITCHELL and WILLIAM M. BENNET, members of and constituting said Public Utilities Commission of the State of California,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

Brief in Opposition

The respondents Public Utilities Commission of the State of California and the individual members thereof (hereinafter called Commission) respectfully submit that the Peti-

tion for a Writ of Certiorari of Dyke Water Company, William M. Lansdale, Arlyne Lansdale, and Dyke Lansdale should be denied.

OPINION BELOW

On November 19, 1964 the Supreme Court of California denied, without opinion, petitioners' Petition for a Writ of Review of Decision No. 67497 of the California Public Utilities Commission issued on July 10, 1964 and reported at 63 Cal. P.U.C. 76 (set out on pages 1a-55a of the Appendix to the instant Petition).

JURISDICTION

The basis of the Court's jurisdiction is set forth in the Petition.

STATEMENT OF THE CASE

Petitioners' Statement of the Case (Petition, pp. 3, 4) is inaccurate in that:

(1) The proceedings before the Commission were not "Heard by a single Commission member.", but by a Commissioner and a Legal Examiner regularly employed as a member of the Commission's staff.

(2) It is stated that the Commission adjudged petitioners guilty of contempt "upon the report and recommendation of the single Commissioner who presided," without reference to the voluminous record.

(3) No reference is made to the conditions attached to the jail sentences imposed by the Commission. (See Appendix to Petition, pp. 52a, 53a, 60a.)

QUESTION PRESENTED

Does the exercise by the Commission, in any manner whatever upon petitioners, of the contempt powers granted

to it by the laws of the State of California, deprive petitioners of rights guaranteed to them by the Constitution of the United States?

No question is presented with respect to the particular manner in which the powers of contempt were exercised in the proceeding before the Commission.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are those set out on pages 7-10 of the Petition.

ARGUMENT

California Law Empowering the Commission to Punish Disobedience of Its Orders by Contempt Proceedings and the Exercise of Such Power Upon Petitioners Did Not Offend Any Provision of the Constitution of the United States.

1. Under California Law the Commission Is for Numerous Purposes a Court, Exercising Strictly Judicial Powers.

Article XII, Section 22, of the Constitution of the State of California, referring to the Public Utilities Commission, is, in material part, as follows:

> "the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record;"

Sections 312 and 2113 of the Public Utilities Code of the State of California (Petition, pp. 8, 9) are legislative implementations (if such are needed) of the power granted to the Commission by the people of the State of California in adopting the constitutional provision above set out.

Other powers of a judicial nature have also been granted to the Commission by the people of the State of California.

Thus, Article XII, Section 23a, of the California Constitution, provides, in part:

> "The [Public Utilities] Commission shall have and exercise such power and jurisdiction as shall be conferred upon it by the Legislature to fix the just compensation to be paid for the taking of any property of a public utility in eminent domain proceedings by the state or any county, city and county, incorporated city or town, municipal water district, irrigation district or other public corporation or district, and the right of the Legislature to confer such powers upon the [Public Utilities] Commission is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

Section 21 of said Article XII deals with rates of railroad and other transportation companies, and concludes

> "Nothing herein contained shall be construed to prevent the [Public Utilities] Commission from ordering and compelling any railroad or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provided no discrimination will result from such reparation."

These powers have been frequently interpreted by the Supreme Court of the State of California.

> "That judicial powers were with deliberation vested in the commission the language of the constitution and of the legislative enactments following the constitution leave no doubt. * * * The constitution has, in the [Public Utilities] commission, created both a court and an administrative tribunal." *Pacific Telephone and Telegraph Company v. Eshleman*, 166 Cal. 640, 650, 689; 137 Pac. 1119, 1122, 1138.

The Commission "is both a court and an administrative tribunal." *City of San Jose v. Railroad Commission*, 175 Cal. 284, 290; 165 Pac. 967, 969.

In a reparation case,

> "* * * before the establishment of federal and state regulatory bodies and commissions vested with powers to award reparation there was no forum except the courts wherein the right to reparation by way of damages as against alleged excessive or discriminatory rates could be adjudicated. The authority of the courts in such matters was recognized as falling within their general jurisdiction. Upon the establishment of the Commissions legislative and judicial powers were in some instances united in the same tribunal. [Citing, *Prentis et al. v. Atlantic Coast Line Railroad Company*, 211 U.S. 210; 53 L.Ed. 150.] The [Public Utilities] Commission of California is such a body." *Southern Pacific Co. v. Railroad Commission*, 194 Cal. 734, 737, 738; 231 Pac. 28, 29.

"The [Public Utilities] Commission is a body upon which has been conferred important administrative authority together with a large measure of judicial power." *The Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission*, 212 Cal. 370, 374; 298 Pac. 991, 992.

In fixing the just compensation to be paid for the taking of public utility property in eminent domain the Commission exercises judicial power. *Maria Water & Power Co. v. Railroad Comm.*, 171 Cal. 706, 711; 154 Pac. 864, 866. *Southern Calif. Edison Co. v. Railroad Comm.*, 6 Cal.2d 737, 749; 59 Pac.2d 808, 813.

"The commission exercises judicial powers and its final determinations within its jurisdiction have the formality of judgments of courts of record." *People v. Lang Transportation Co.*, 217 Cal. 166, 170; 17 Pac.2d 721, 723.

In *People v. Western Airlines*, 42 Cal.2d 621, 268 Pac.2d 723, quoted, in part, on pages 11, 12 of the Petition, the Supreme Court of California, in overruling the earlier

case of *Stratton v. Railroad Commission*, 186 Cal. 119; 198 Pac. 1051, stated the following (p. 632).

> "It was also said in the Stratton case that 'the commission is essentially an administrative and legislative tribunal, and not a court,' and the fact that the commission must make determinati of fact for its own guidance 'does not make it a art or change the character of its decrees from administrative or legislative orders into judicial judgments.' These and other statements in the opinion in that case are inconsistent with the decisions of this court both before and after it on the subject of the judicial power of the commission. Insofar as they are so inconsistent they are overruled."

In view of the foregoing interpretation of California law by the highest court of that State it is a fundamental error to refer to the Commission as a mere "administrative agency."

2. Even if the Commission Were a Mere Administrative Agency, the Grant to It of Contempt Powers Does Not Transgress the Constitution of the United States.

In *Dreyer v. Illinois*, 187 U.S. 71, 84; 47 L.Ed. 79, 85, this Court said, speaking through Mr. Justice Harlan, in upholding the constitutionality of an Illinois statute granting certain judicial functions to administrative officials:

> ". . . even if the statute in question were obnoxious to the objection now urged by the plaintiff in error, [contravention of state and federal constitutions] it would not follow that this court would review a judgment of the highest court of the state, which expressly or by necessary implication sustained it as constitutional. A local statute investing a collection of persons not of the judicial department, with powers that are judicial . . . *presents no question under the Constitution of the United States.* (Emphasis added.) The right to the due process of law prescribed by the 14th amendment would not be infringed by a local statute of

> that character. Whether the legislative, executive and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons may, in respect to some matters exert powers which, strictly speaking, pertain to another department of government, is for the determination of the state. And its determination one way or the other cannot be an element in the inquiry, whether the due process of law prescribed by the 14th amendment has been respected by the state or its representatives when dealing with matters involving life and liberty."

These views indicate that in alluding to "our system of government" in *Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 485; 38 L.Ed. 1047, 1060, as quoted on page 14 of the Petition, Mr. Justice Harlan was referring to the structure of the United States with its federally created administrative agencies and federal judiciary. This conclusion is reinforced by the last sentence of Mr. Justice Harlan quoted on page 14 of the Petition,

> "The power to impose fine or imprisonment in order to compel the performance of *a legal duty imposed by the United States* can only be exerted under the law of the land by a competent judicial tribunal having jurisdiction in the premises." (Emphasis added.)

In *Consolidated Rendering Company v. Vermont* (1908), 207 U.S. 541, 552; 52 L.Ed. 327, 335, this Court stated:

> "There is no provision in the Federal Constitution which directly or impliedly prohibits a state, under its own laws, from conferring upon nonjudicial bodies certain functions that may be called judicial. . . ."

This Court denied a petition for writ of certiorari in *Wycoff Co. v. Public Service Commission* (1962), 13 Utah 2d 123; 369 P.2d 283; cert. den. 371 U.S. 819; 9 L.Ed. 2d

59, where the Public Service Commission of the State of Utah had imposed upon petitioner a penalty of $18,500.00 for violations of law pursuant to a statute authorizing a penalty of not less than $500.00 nor more than $2,000.00 for each offense. The Utah Court rejected an argument similar to that of petitioner here that the penalty was criminal in nature and could be imposed only by a court.

> "The Supreme Court of the United States has never held that judicial power has been improperly vested in an agency . . ." 1 *Davis, Administrative Law,* Section 2.12, page 131.

A number of state courts, however, have upheld grants of the power to punish for contempt to administrative bodies, whether based on the state constitution, (*Ex parte Tindall,* 102 Okla. 192, 197; 229 Pac. 125; *State Ex rel Morton v. Meyers,* 171 La. 313, 131 So. 31), legislative enactment (*Plunkett v. Hamilton,* 136 Ga. 72, 77, 70 S.E. 781, 783; *In re App. of Clark,* 65 Conn. 17, 31 Atl. 522) or on the view that such power is inherent or implied. (*In re Sanford,* 236 Mo. 665, 139 S.W. 376; *In re Hayes,* 200 N.C. 133, 156 S.E. 791; *People v. Learned,* New York 5 Hun 626 [12 Sup. Ct. 3 Dept.]).

CONCLUSION

1. Under the law of California the Commission is for many purposes a court, and exercises strictly judicial powers, of which the power to punish for contempt is one.

2. Even if the Commission were a mere administrative agency, the grant to it and exercise by it of contempt powers pursuant to California law do not violate any provision of the Constitution of the United States.

The Petition should be denied.

Respectfully submitted,

RICHARD E. TUTTLE
Chief Counsel

J. THOMASON PHELPS
Principal Counsel

CATHERINE D. MCANDREW
Counsel

5072 State Building
San Francisco, California 94102

Attorneys for Respondents

Dated: April 8, 1965